XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 82/ सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT/:
(Accused) (In Jail)

Muchaki Bhima, S/o Deva Mariya, Age 40 years, R/o Village Raikad Loharpara, Police Station: Kodenar, Distt.: Bastar (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh

{Criminal appeal under Section 374 (2) Cr.P.C.}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

22-8-2007

Miss Sangeeta Mishra, counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on Dais.

L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 12-12-2001 passed by the 4th Additional Sessions Judge, Jagdalpur, Bastar in Sessions Trial No.9/2001, whereby the appellant was convicted under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for two months.

Case of the prosecution, in brief, is that on 20th October, 2000, at about 4 p.m. the accused came to the house of his elder brother Sukhram

मामला क्रमांक G.A. 122/ सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

carrying axe in his hand, in the first instance, he rushed towards Parvati in order to frighten her, when she ran away, the accused attacked Sukhram, who was sleeping, with the axe, as a result of which Sukhram died instantaneously. Next day Parvati, wife of the deceased, along with Kotwar Ramu went to Police Station: Kodenar and gave merg intimation Ex.P-8, based on that first information report Ex.P-7 was registered. The Investigating Officer left for the scene of occurrence and after giving notice Ex.P-12 to the Panchas, prepared inquest P-11 on the body of Muchaki Sukhram. Body of the deceased was sent for post-mortem examination to Primary Health Centre, Badekilepal under Ex.P-4A, where Dr. Ten Singh Nag (PW-4) conducted post-mortem on the body of Muchaki Sukhram. He opined that cause of death is coma and syncope due to massive internal haemorrhage as a result of injury over left carotid artery region. Mode of death is homicidal. He prepared the post-mortem report Ex.P-4.

After due completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned 4th Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined seven witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime.

मामला क्रमांक G.A. 122/ सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned Additional Sessions Judge after hearing counsel for respective parties convicted and sentenced the accused as aforementioned.

We have heard Miss Sangeeta Mishra, learned counsel for the appellant and Mr. Ashish Shukla, learned Additional Public Prosecutor for the State/respondent.

As far as involvement of the accused/appellant in the crime in question is concerned, there is only one eyewitness namely, Muchaki Parvati (PW-5), wife of the deceased. Deceased Sukhram was elder brother of accused Muchaki Bhima. In the examination-in-chief, Parvati (PW-5) has stated that on the fateful day at about 12-1 p.m. she was at her residence, her husband was sleeping at the residence, the accused attacked her husband with the axe, she saw injuries on left side of neck and in occipital region there were three injuries. After committing the murder of her husband, the accused said that he has murdered her husband with the axe. He is leaving the axe there itself, thereafter he ran away. She was all alone at the residence. Next day she went with the Kotwar to the Police Station and lodged the report. In cross-examination para 4, she has stated that in fact the accused wanted to assault her, he chased her, but could not catch her. It is correct that she ran away. In cross-examination para 5 she has further stated that when she returned back by that time, the accused had already murdered her husband and he was not present there.

Perusal of the first information report (Ex.P-7) lodged by this witness (PW-5) reveals that share of land of the accused was already given to the accused by her husband, which was sold by the accused, even then, he

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मामला क्रमांक G.A. 122 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

used to quarrel with her husband saying that less share has been given to him. On 20th October, 2000 at about 4 p.m. when her husband was sleeping in front of the house, the accused came to murder her husband, carrying axe, he frightened her, therefore, she ran away. The accused attacked with the axe on neck of her husband as a result of which he died. The accused attacked her husband with the axe.

There is no other witness to the incident and Parvati (PW-5) is wife of the deceased. The evidence of this witness, who has claimed herself to be the eyewitness, does not inspire confidence of the Court, because in examination-in-chief, she has stated that the accused came to attack her, at that time, her husband was sleeping, the accused attacked her husband with the axe, whereas, in cross-examination she has stated that the accused rushed towards her and chased her, but she ran away and the accused could not catch her. When she returned, she saw her husband lying dead, at that time the accused was not present. In her evidence before the Court as PW-5 she has stated that the accused attacked her husband at 12-1 p.m., whereas in the first information report lodged by this witness she has stated that the accused came to her residence at about 4 p.m. and committed the murder of her husband.

In the circumstances, there is contradiction regarding the time of offence in her evidence and there is no other witness to corroborate the evidence of this witness. Her evidence in the cross-examination is that when she ran away, the accused chased her, when she returned, her husband was found lying dead and the accused had already left. This shows that in fact she did not witness the incident, whereas in examination-in-chief, she has

मामला क्रमांक G.A. 12/ सन् 200 2

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	stated that she saw the accused attacking her husband. Therefore, her evidence is contrary not only in respect of time, but also in respect of witnessing the crime. Hence, we are of the opinion that the evidence of Parvati (PW-5) regarding involvement of the accused in the crime in question does not inspire confidence. The prosecution has failed to establish crime against the accused beyond reasonable doubt. Therefore, conviction and sentence awarded to the accused cannot be sustained and the accused is entitled for acquittal. In the result, the appeal succeeds. Conviction and sentences imposed upon the appellant under Section 302 of the I.P.C. are set aside. He is acquitted of the said charge. The accused is said to be in detention since 23rd October, 2000, therefore, he be set on liberty forthwith, if not required in any other case. Sd/- L.C. Bhadoo Judge	Sd/- Sunil Kumar Sinha Judge

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